

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0235P**

**Withholding Tax**

**January 1997 – December 1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer, in a letter dated May 20, 1998 protested notices for the following periods: January 1997, February 1997, April, 1997, May 1997, August 1997, October 1997 and December 1997. In a prior letter dated April 2, 1998 taxpayer requested a waiver of penalty on its withholding taxes for 1997 due to the office person responsible for filing and paying suffered illness that led to subsequent surgery. In addition the computer crashed and the records had to manually be recreated. Taxpayer received no response to the letter which was received on April 23, 1998. On May 21, 1998 the taxpayer protested the penalty assessment on its April and May 1997 sales tax returns and on June 10, 1998, the taxpayer requested a hearing to present additional evidence.

At hearing the taxpayer states it is highly dependent on its employees. In 1997 its key employee became ill and had surgery in December 1997.

I. **Tax Administration** – Penalty

### **DISCUSSION**

At issue is whether the taxpayer was negligent in remitting trust tax due timely.

Taxpayer failed to remit tax and/or timely file returns which caused the department to issue BIA billings for withholding and sales taxes which carried a 20% penalty. Upon filing its returns, the penalty was reduced to ten percent (10%).

Taxpayer protests the penalty and states that its key employee was ill and required surgery. In addition, the computer crashed.

Department records indicate the taxpayer was late in prior years subjecting it to a penalty, four of which were cancelled. In addition to the penalty protested, the taxpayer has a one hundred percent (100%) penalty for a returned check for the period ending December 31, 1997 which was not protested nor paid.

The department has already reduced the twenty percent non-filing penalty to a ten percent (10%) negligence penalty for failure to file timely.

The department finds no reasonable cause exists, therefore, the request for penalty waiver is denied.

### **FINDING**

Taxpayer's protest is denied.